S/49-309/CUS/AHD/ 2024-25

सत्यमेव जयते

सीमा शुल्क (अपील) आयुक्त का कार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,

चौथी मंज़िल 4th Floor, हुडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाष क्रमांक Tel. No. 079-26589281

DIN- 20260371MN000091919C

क	फ़ाइलसंख्या FILE NO.	S/49-309/CUS/AHD/ 2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL No. (सीमा शुल्क अधिनियम, 1962 की धारा 128 क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-705-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	30.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No.: 138/ADC/ACC/OIO/Troikaa/24-25 dt. 09.01.2025 passed by the Additional Commissioner, Customs, Air Cargo Complex, Ahmedabad.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Tulsidas Khimji Pvt Ltd., Ashram Road, 313-314, Devanandan Mega Mall, Opp. Sanyas Ashram, Near M J Library, Ahmedabad- 380 009 info@tkpl.in mktg@tkpl.in

आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

.1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है .
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी) (1) यथा संशोधित (के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव) आवेदन संशोधन(, वित्त मंत्रालय,)राजस्व विभाग (संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	लिखित सम्बन्धित आदेश/Order relating to :
(क(	बैगेज़ के रूप में आयातित कोई माल .
(a)	any goods imported on baggage.
(ख(	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो .
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग (	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी .
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
)क (	कोर्ट फी एक्ट,1870 के मद सं 6.अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए .
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
)ख(	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
)ग(	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
)घ(	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम,) 1962 यथासंशोधित (में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु)-/200 .रूपए दो सौ मात्र (या रु)-/1000.रूपए एक हज़ार मात्र(,जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर 6.की दोप्रतियां .यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु -/200.और यदि एक लाख से अधिक हो तो फीस के रूप में रु-/1000.
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	**मद सं 2 .के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए 3-.में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं**	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल,बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद380016-	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
)क(	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए .**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
)ख(	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
)ग(	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
)घ(	इस आदेश के विरुद्ध अधिकरण के सामने,मांगे गए शुल्क के % 10 अदा करने पर,जहां शुल्क या शुल्क एवं दंड विवाद में हैं,या दंड के % 10 अदा करने पर,जहां केवल दंड विवाद में है,अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्त अधिनियम की धारा) 129 ए (के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र) -क (रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील - : अथवा** **)ख (अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER IN APPEAL

M/s Tulsidas Khimji Pvt Ltd., Ashram Road, 313-314, Devanandan Mega Mall, Opp. Sanyas Ashram, Near M J Library, Ahmedabad- 380 009 (herein after referred as the appellant) filed appeal against the OIO No.: OIO No.: 138/ADC/ACC/OIO/Troikaa/24-25 dt. 09.01.2025 (hereinafter referred to as the impugned OIO) passed by the Additional Commissioner, Customs, Air Cargo Complex, Ahmedabad (hereinafter referred to as the adjudicating authority).

2. Brief facts of the case are that the appellant is a Custom Broker appointed by M/s Troikka Pharmaceuticals Ltd, Survey No.: 791 & 792, Taluka-Kadi, Sanand-Kadi Road, Thol, Guajarat (hereinafter referred to as Importer). The appellant filed Bill of Entry No.: 2390140 dated 02.03.2024 at Customs, Air Cargo Complex, Ahmedabad on behalf of the importer for the import and clearances of goods "Enoxaparin Sodium" (hereinafter referred to as the impugned goods). The imported goods classified under CTI 2942 0090 under the First Schedule to the Customs Tariff Act, 1975.

2.1 The importation and clearances of the impugned goods governed by the provisions of the Drugs and Cosmetic Rules, 1945. The CDSCO (Central Drugs Standard Control Organization), with reference to NOC, vide mail dated 04.03.2024 raised the query that the shelf life of the impugned good is less than 60% and expiry as 4 years instead of 3 years. As the importer obtained the NOC, approached to the office of the AC, Customs, Air Cargo Complex, Ahmedabad with a request to permit re-export of the impugned goods to its foreign supplier M/s Yantai Dongcheng Biochemicals Co Ltd., China.

2.2 A letter dated 12.04.2024 was written to the Assistant Drugs Control (I), CDSCO, Ahmedabad by the AC, Customs, Air Cargo Complex, Ahmedabad to inform the status of the NOC with respect to the impugned goods. In response to the same, vide letter dated 03.05.2024, it was informed that *"With reference to the subject cited above and after verification the shelf of product Enoxaparin Sodium bearing Certificate No.240515/04779/84 dated 15.05.2024 received as of Standard quality is enclosed herewith for your kind information and further necessary action in the matter please confirmed the goods to be standard quality."*

2.3 As per the provisions of the Rule 31 of Drugs and Cosmetics Rules, 1945, no drug having less than Sixty percent (60%) of residual life period as on the date of import shall be allowed for import by the Licensing authority. In the present case, the Assistant Drugs Control (I), CDSCO, Ahmedabad vide letter dated 03.05 2024 has reported the shelf life of the subject imported product was found less than 60% and as such the goods were prohibited as per Rule 31 of Part V of the Drugs and Cosmetics. Rule 1945. Therefore, the importer has rendered the subject goods sought clearance under Bill of Entry No. 2390140 dated 02.03.2024 liable for confiscation under Section 111 (d) of Customs Act 1962 for being imported in contravention of Rule 31 of Drugs and Cosmetics Rules 1945 and also liable under penal provisions under Section 112 (a) (i) of Customs Act 1962 for rendering goods liable for confiscation.

2.4 The Customs authority under reasonable belief that the impugned goods i.e. "Enoxaparin Sodium" sought clearance under Bill of Entry No. 2390140 dated 02.03.2024 were liable to confiscation under Section 111(d) of Customs Act 1962, the impugned goods were placed under seizure under Section 110 of Customs Act 1962 vide seizure memo dated 05.06.2024. The importer vide letter dated 15.07.2024 requested for the provisional release of the impugned goods for re-export. The competent authority has allowed provisional release of the goods, for the purpose of re-export only, subject to the two conditions (a) Bond for the value of seized goods in proper format and (b) Bank Guarantee equivalent to 25% of the Bond amount. The importer submitted (i) Notarized Bond for the value of seized goods for an amount of Rs.42,00,000/-in prescribed format. (ii) Bank Guarantee equivalent to 25% of the bond value issued by Axis Bank Ltd. CBB Ahmedabad bearing the B.G. No. 15300100018479 dated 21.08.2024

2.5 The appellant-customs Broker in the matter M/s Tulsidas Khimji Pvt Ltd., has filed the present Bill of Entry No 2390140 dated 02.03.2024 for clearance of "Enoxaparin Sodium for home consumption. The impugned goods have been imported in contravention of the provision of Rule 31 of Drugs and Cosmetics Rules 1945. Thus, appellant have abetted with import in rendering the goods liable for confiscation under Section 111 (d) of Customs Act 1962 and have rendered themselves liable for penalty under Section 112 (a) (i) of Customs Act 1962.

2.6 A Show Cause Notice F.No.: ACC/ASST/AMND/BE/85/2024 dated 10.06.2024 issued to the appellant under Section 124 of the Customs Act, 1962 proposing penalty on the appellant under section 112(a) of the Customs Act, 1962 for rendering the impugned goods liable for confiscation. Simultaneously, a proposal for confiscation of the impugned goods under Section 111(d) and penalty under section 112(a) of the Customs Act, 1962 was also made.

2.7 The adjudicating authority, after following principles of natural justice, passed impugned order confirming confiscation of the impugned goods under section 111(d) of the Customs Act, 1962 and imposed fine of Rs. 4,00,000/- in lieu of confiscation for the purpose of re-export, penalty on the exporter of Rs. 4,00,000/- under section 112(a)(i) of the Customs Act, 1962 and penalty on appellant-Customs Broker of Rs. 4,00,000/- under section 112(a)(i) of the Customs Act, 1962.

3. Being aggrieved and dissatisfied with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal dt. 28.02.2025 on 05.03.2025. They have, inter-alia, raised various contentions and filed detailed submissions as given below in support of their claims :

> *"I At the outset, it is submitted that the impugned order passed by the Additional Commissioner is beyond the show cause notice and hence not sustainable. It is submitted that the show cause notice in paragraph 4 specifically states that Rule 31 of the Drugs and Cosmetics Rules, 1945 prescribes that no drug having less than 60% shelf life as on the date of import is allowed to be imported and that the appellant abetted with the importer in rendering the goods liable for confiscation under Section 111(d) of the Customs Act, 1962 inasmuch as the imported goods were imported in contravention of the provisions of Rule 31 However, in the impugned order the Additional Commissioner while dealing with the submissions of the appellant in para 14 has referred to Rule 23 of the Drugs and Cosmetics Rules, 1945 along with form 10. The Additional Commissioner has held that the appellant filed the bills of entry on behalf of the importer without insisting for import licence in form 10 which was mandatory under Rule 23 of the Drugs and Cosmetics Rules. 1945 and hence it was a fit case for imposition of penalty under Section 112 of the Customs Act. 1962 There is a clear contradiction in between the proposal in the show cause notice which was on the basis of Rule 31 while as the Additional Commissioner has referred to a complete different rule ie Rule 23 read with form 10 and has imported new facts which were nowhere alleged in the show cause notice. It is a settled legal position that the show cause notice is the foundation of a case and nothing can go beyond the show cause notice The Hon'ble Supreme Court has in the case of M/s. Ballarpur Industries Ltd reported al 2007 (215) ELT 489 categorically held that the show cause notice is the foundation of the matter of levy and recovery of duty and it would not be open for the department to argue a case beyond the show cause notice The Hon ble Supreme Court has in the case of M/s. Toyo Engineering India Ltd. reported at 2006 (201) ELT 513 has held that the grounds which did not find mention in the show cause notice cannot be argued by the department and the department cannot travel beyond the scope of the show cause notice, The CESTAT Ahmedabad in the case of Ratnaveer Precision Engineering reported at 2023 (5) TMI 48 came to a conclusion that the claim of the Revenue that the adjudicating authority can classify the goods in a Customs Tariff Heading different from the one proposed in show cause notice, cannot be accepted.*

Therefore, it is clear that no order could have been passed by invoking provisions which were not mentioned in the show cause notice and by referring to new facts which the appellant was never given a chance to address to. As a matter of fact, it is nowhere the case of the department in the show cause notice that M/s. Troikaa Pharmaceuticals Ltd were not in possession of an import licence in form 10 which was mandatory under Rule 23 of the Drugs and Cosmetics Rules, 1945. The limited case as is evident from the show cause notice was that the imported goods did not have a shell life of 60% which was required under Rule 31 of the Drugs and Cosmetics Rules. 1945 and this was the only reason why confiscation of the goods was proposed When there was no reference to Rule 23 or an allegation that M/s. Troikaa Pharmaceuticals Ltd, were not in possession of licence to import the goods, the Additional Commissioner could not have referred to such presumption in order to impose penalty on the appellant. As a matter of fact form 10 of the Drugs and Cosmetics Rules only refers to licence for import of certain drugs, however form 10 nowhere refers to the residual shelf life of the product. Therefore, the reference to form 10 read with Rule 23 is completely erroneous in the facts of the present case inasmuch as the case booked against M/s Troikaa Pharmaceuticals Ltd was regarding violation of Rule 31 and not Rule 23 read with form 10. Furthermore, the Additional Commissioner has only recorded such finding on a presumption that the appellant did not insist for a licence in form 10 which was mandatory under Rule 23 such finding is nowhere borne out of the record of the case or the show cause notice and hence such presumption was completely unwarranted in facts as well as in law. Therefore, the impugned order passed by the Additional Commissioner is beyond the scope of the show cause notice and hence on such ground alone the impugned order is liable to be set aside in the interest of justice.

***II.** It is submitted that the impugned order passed by the Additional Commissioner is in gross violation of the principles of natural justice inasmuch as the Additional Commissionereven after recording the submissions of the appellant in para 10(c) has resorted to give findings in which he has not dealt with any of the submissions or case laws referred to by the appellant. As a matter of fact, para 14 of the impugned order clearly reveals that no cogent evidence or reasons have been assigned as to how the appellant abetled with M/s. Troikaa Pharmaceuticals Ltd to import drugs which had lesser than 60% of residual shelf life. It is nowhere stated in the impugned order that the appellant was well aware that goods having residual shelf life less than 60% were being sent by the overseas exporter and that M/s Troikaa Pharmaceuticals Ltd. had specifically informed the appellant that the goods which were being imported were having lesser than 60% of residual shelf life. Therefore, the impugned order which does not deal with any of the submissions made by the appellant and as are recorded in para 10(c) is in gross violation of the principles of natural justice and hence liable to be set aside.*

***III.** It is submitted that in the impugned order the Additional Commissioner while imposing penalty on the appellant has lost sight of the fact that even M/s. Troikaa Pharmaceuticals Lld were not aware that the drugs with a shelf life lesser than 60% were sent by the overseas exporter In the impugned order in para 2. the letter dated 03.04.2024 is reproduced and it is clear from this letter that M/s. Troikaa Pharmaceuticals Ltd had themselves approached the office of the Assistant Commissioner of Customs. Air Cargo Complex, Ahmedabad and informed them that the overseas exporter were ready to accept the goods back as that did not know about the rule of minimum requirement of 60% of shelf life and hence permission to re-export the goods was sought. Furthermore, the Assistant Drugs Control Board vide letter dated 03.05.2024 as reproduced in para 3. informed that the goods were of standard quality. Therefore, evenwhen the goods had lesser than 60% shell life, the goods were of acceptable standard quality Additionally, as per Rule 31 of the Drugs and Cosmetics Rules the licensing authority could in exceptional cases allow the import of drug having lesser shelf life, therefore, the imported goods were* *restricted but not prohibited and hence the invocation of Section 111(d) was completely erroneous. The Additional Commissioner has not taken note of the fact that the impugned goods were not prohibited and hence provisions of Section 111ld) were not applicable and has also not taken note of the fact that the importer themselves asked the Assistant Commissioner. Air Cargo Complex for permission to re-export the goods because they do not comply with Rule 31. The Additional Commissioner hence falled to consider that the present one was not a case where M/s. Troikaa Pharmaceuticals Ltd. had any mala-fide intention to import drugs which were having less than 80% residual shelf the and on the contrary the original importer Ie. Mis. Troikaa Pharmaceuticals Ltd. themselves asked for permission to re-export the goods. While considering such facts, it was clear that the appellant had no role play in abetting the offence of trying to import goods with less than 80% shelf life inasmuch as the importer themselves had no such intention to import the goods with less than 60% shelf life had they known from the overseas exporter that the goods were having less than 60% shelf life. The impugned order hence does not consider the correct facts and is passed on assumptions and presumptions as a evident on a perusal of paras 12. 13 and 14 and hence such impugned order is not sustainable in the eyes of law.*

***IV.** It is a settled legal position that in absence of the knowledge of any contravention and when there is no proof of wrongful intent, penalty under Section 112(a) of the Customs Act. 1962 cannot be imposed. The Hon'ble Tribunal in the case of M/s. Lohia Travels & Cargo reported of 2015 (8) TMI 141 has held that when there is no evidence to establish that the CHA had any knowledge of the contravention, and there was no evidence to establish the wrongful intent, especially when a CHA has become a party to fraudulent import un-knowingly, then no penalty under Section 112(a) can be imposed. The Hon'ble Tribunal in the case of M/s. Mukherjee & Alliances (India) Pvt. Ltd. reported at 2020 (1) TMI 478 has held that when the CHA does not have prior information about the mis-declaration of a consignment, then penalty under Section 112 of the Customs Act, 1962 cannot be imposed. The Hon'ble Tribunal, Mumbai in the case of M/s Savithri Jewellers Pvt. Ltd, reported of 2020 (374) ELT 754 has held that when the department has not produced any evidence to establish that the CHA had any knowledge about mis declaration, and when the CHA has prepared documents in a bona-fide mariner based upon the declaration made by the exporter, the CHA cannot be penalized under Sections 114(i) and 114AA of the Customs Act. 1962. In another case of M/s. Apson Enterprises reported al 2017 (358) ELT 817, the Hon'ble Tribunal. Mumbai has again held that when the department has nothing to show that the CHA was concerned with or aware about the valuation of goods, the CHA cannot be penalized under Section 114(m) of the Customs. Act. 1962. In the case of Nirmal Kumar Agarwal reported at 2013 (298) ELT 133 the Hon'ble Tribunal has again held that until and unless it is proven that the CHA was aware of the mis-declaration and the ingredients of Section 114(i) are complete, no penalty can be imposed on the CHA. The Hon'ble Tribunal. Chennai in the case of M/s. Moriks Shipping and Trading Pvt. Ltd. reported at 2008 (227) ELT 577 has categorically held that the customs house agent is not required to go into the authenticity of the declaration made by the exporter in the export documents and in absence of any evidence to show that the CHA not only participated in mis-declaration, penalty under Section 114(ii) cannot be imposed. The department went in appeal against the decision of the Hon'ble CESTAT and the Madras High Court in its decision reported at 2015 (317) ELT 3 has vide a detailed order confirmed the findings given by the Hon'ble Tribunal and has held that in absence of any positive evidence that the CHA was actually involved in mis-declaration, penalty under Section 114 of the Customs Act, 1962 cannot be imposed*

Thus the law about imposition of penalty on the CHA is very clear that only when the CHA was well aware and actually participated in facilitating the mis-declaration *of goods or value, can the CHA be held accountable. Furthermore, it is also clear that the CHA is not supposed to go into and verity each and every detail provided by the exporter about description and value of goods. Therefore, the settled position of law is that prior knowledge and intent is necessary for the purpose of imposing penalty under Section 112 Since in the present case. Inere is no cogent evidence to show that the appellant had any knowledge of the shelf life, the penalty under Section 112(a) is not sustainable. Furthermore section 112(a) provides for penalty on any person who in relation to any goods, does or omils to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets doing or omission of such act. But the appellant has not done anything or omitted to do anything which would render the goods in question liable for confiscation. When Section 111 of the Act is not attracted in the present case the whole basis for imposing penalty on the appellant would vanish. The appellant further submits that there was no deliberate mis-declaration by the appellant in respect of any other particular with the entry made under the Customs Act The order of penalty on the appellant in this case by invoking Sections 112(a) of the Customs Act is therefore clearly without any justification*

<u>(i)</u> The matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the land mark case of Messers Hindustan Steel Limited reported in 1978 ELT (J159) wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so. The Apex Court has further held that only in cases where it was proved that the assessee was guilty of conduct contumacious or dishonest and the error committed by the assessee was not banalide but was with knowledge that the assessee was required to act otherwise, penalty might be imposed In this case no dishonest or contumacious conduct on the appellants part having been proved, even a token penalty would not be justified in the facts of the present case

***V** The impugned order passed by the Additional Commissioner is even otherwise illegal, incorrect, without any justification and therefore, it is liable to be set aside."*

<u>PESONAL HEARING:-</u>

4. Personal hearing in the matter was held on 24.12.2025, wherein Shri Amal Dave, Advocate, attended personal hearing on behalf of the Appellant in virtual mode and he reiterated the submissions made in appeal memorandum.

<u>DISCUSSION & FINDINGS:</u>

5. Before going into the merits of the case, it is observed from Form C.A.-1 that the impugned order dated 09.01.2025 is shown to be received on 10.01.2025 and the present appeal has been filed on 05.03.2025. Thus, the appeal has been filed with in the normal period of 60 days prescribed for filing an appeal.

5.1 It is further observed that the appellant, with respect to the payment of mandatary pre-deposit for filing appeal, has submitted that they have paid Rs. 30,000/-

vide challan no.: 1928865565 dated 28.02.2025 which fulfil the requirement of pre deposit under the provisions of Section 129E of the Customs Act, 1962.

5.2 As the appeal has been filed within the stipulated time-limit under Section 128 of the Customs Act, 1962 and with fulfilling the requirement of mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal. One set of the appeal memorandum has forwarded to the adjudicating authority for comments vide this office letter dated 03.04.2025, but no reply thereof has been received. So, I proceed to decide the appeal on the basis of documents submitted by the appellant.

6. I have carefully examined the impugned order, the Appeal Memorandum filed by the appellant, the written and oral submissions made during the course of personal hearing, and the documents available on record. The issue that arises for consideration in the present appeal is whether, in the facts and circumstances of the case, the adjudicating authority was justified in imposing penalty under Section 112(a)(i) of the Act, and whether such findings are legal, proper, and justified in light of the evidence available on record.

6.1. It is observed that the appellant was appointed by the importer to file Bill of Entry No. 2390140 dated 02.03.2024 at Air Cargo Complex, Ahmedabad for import and clearance of goods namely "Enoxaparin Sodium" for home consumption. The import of the said goods is governed by the provisions of the Drugs and Cosmetics Rules, 1945. The matter was referred to CDSCO for grant of No Objection Certificate (NOC). However, CDSCO did not grant NOC on the ground that the residual shelf life of the imported goods was less than 60% at the time of import. Consequently, the goods were held to be in contravention of Rule 31 of the Drugs and Cosmetics Rules, 1945. The goods were seized under Section 110 of the Customs Act, 1962 vide seizure memo dated 05.06.2024. Subsequently, the goods were provisionally released for re-export subject to execution of bond and furnishing of bank guarantee. In the instant case, the SCN dated 10.06.2024 was adjudicated by the authority, who confirmed the allegations set out in the said notice.

6.2 At the outset, it is observed that the proposal in the Show Cause Notice was limited to the alleged violation of Rule 31 of the Drugs and Cosmetics Rules, 1945, on the ground that the imported goods had residual shelf life of less than 60% at the time of import. The role attributed to the appellant, being a Customs Broker, was that of abetment in such import, thereby rendering the goods liable for confiscation under Section 111(d) of the Customs Act, 1962 and attracting penalty under Section 112(a)(i) of the Act.

6.3 However, on perusal of the impugned order, with respect to the case of the appellant, it is observed that the adjudicating authority has travelled beyond the scope of the Show Cause Notice by invoking provisions of Rule 23 of the Drugs and Cosmetics Rules, 1945 read with Form 10, and has held that the appellant failed to ensure that the importer possessed a valid import licence. This ground was neither alleged nor proposed in the Show Cause Notice. It is a settled position of law that the Show Cause Notice is the foundation of the case and no findings can be recorded beyond the allegations made therein. Therefore, the findings of the adjudicating authority on the basis of Rule 23 and Form 10 are clearly beyond the scope of the Show Cause Notice and are not sustainable in law.

6.4 Further, I find that the impugned order does not establish, with any cogent evidence, that the appellant had knowledge of the alleged contravention relating to the residual shelf life of the imported goods. There is no material on record to indicate that the appellant was aware that the goods being imported had shelf life of less than 60% or that the appellant had actively participated in or facilitated such import with any mala fide intent. This clearly indicates absence of any deliberate intent on part of the appellant.

6.5 Coming to the role of the appellant, it is a settled legal position that a Customs Broker acts on the basis of documents and declarations provided by the importer and is not expected to independently verify technical parameters such as residual shelf life of pharmaceutical products. In absence of any positive evidence establishing knowledge, involvement, or deliberate omission on part of the Customs Broker, penalty under Section 112(a) cannot be sustained. It is a well-settled principle that penalty under Section 112(a) of the Customs Act, 1962 cannot be imposed in absence of knowledge or deliberate involvement. In *Hindustan Steel Ltd. v. State of Orissa*, the Hon'ble Supreme Court held that penalty should not be imposed merely because it is lawful to do so, and that it must be shown that the conduct was contumacious or dishonest. Applying the ratio of this judgment, I find that no such conduct is attributable to the appellant in the present case.

6.6 Further, the Hon'ble Tribunal in *Lohia Travels & Cargo v. CC* held that in absence of evidence showing knowledge or involvement of the Customs House Agent, penalty under Section 112(a) is not sustainable. Similarly, in *Mukherjee & Alliances (India) Pvt. Ltd. v. CC*, it was held that when a Customs Broker acts on the basis of documents provided and has no prior knowledge of any violation, penalty cannot be imposed.

6.7 In *CC v. Moriks Shipping & Trading Pvt. Ltd.*, affirming the Tribunal's order, it was held that a Customs Broker is not required to verify the correctness of every declaration made by the importer and cannot be penalized in absence of positive evidence showing involvement in the contravention.

6.8 In the present case, I find that the appellant has acted in the normal course of business as a Customs Broker and filed the Bill of Entry on the basis of documents provided by the importer. There is no evidence on record to show that the appellant had any role in determining or verifying the residual shelf life of the imported pharmaceutical product, which is a technical parameter beyond the scope of routine Customs clearance functions. It is also pertinent to note that under Rule 31 of the Drugs and Cosmetics Rules, 1945, the import of drugs with less than 60% shelf life is not absolutely prohibited, and the competent authority has discretion to allow such imports in exceptional circumstances. In view of the above discussion, I find that the impugned order has been passed on assumptions and presumptions without establishing any act or omission on part of the appellant amounting to abetment. The essential ingredients required for imposition of penalty under Section 112(a), namely knowledge and intent, are clearly absent in the present case. Accordingly, I hold that the penalty imposed on the appellant under Section 112(a)(i) of the Customs Act, 1962 is not sustainable either on facts or in law.

7. In view of the foregoing discussion and findings, I hold that the impugned order, with respect to the present appeal of the appellant, has been passed without establishing any cogent evidence of knowledge, intent, or active involvement on the part

आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

of the appellant, being a Customs Broker. I find that the essential ingredients required for imposition of penalty under Section 112(a)(i) of the Customs Act, 1962 are not satisfied in the present case.

Accordingly, the penalty imposed on the appellant under Section 112(a)(i) of the Customs Act, 1962 is hereby set aside. The appeal filed by the appellant is allowed, with consequential relief, if any, as per law.

(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-309/CUS/AHD/2024-25

Date: 30.03.2026

By email (as per Section 153 of the Customs Act, 1962)

To,

M/s Tulsidas Khimji Pvt Ltd.,
Ashram Road, 313-314,
Devanandan Mega Mall,
Opp. Sanyas Ashram, Near M J Library,
Ahmedabad- 380 009

info@tkpl.in mktg@tkpl.in

Copy to:
1.The Chief Commissioner of Customs Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in)
2.The Principal Commissioner of Customs, Custom House, Ahmedabad. (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)
3. The Additional Commissioner of Customs, Air Cargo Complex, Ahmedabad. (email: aircargo-amd@gov.in cus-ahmd-adj@gov.in)
4. The Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad. (accusacc@gmail.com
5. Shri Amal Dave, Advocate on behalf of M/s Tulsidas Khimji Pvt Ltd., (pareshdave.lawyer@gmail.com)
6. Guard File.